House Bill 727

By: Representatives Battles of the 15th, Turner of the 21st, Parsons of the 44th, LaRiccia of the 169th, and Kaiser of the 59th

A BILL TO BE ENTITLED AN ACT

1 To amend Chapter 10 of Title 25 of the Official Code of Georgia Annotated, re

- 2 regulation of fireworks, so as to revise provisions relating to the sale, use, or explosion
- 3 thereof; to provide for definitions; to revise the days, times, and locations in which consumer
- 4 fireworks may be lawfully used or exploded; to revise situations and places within this state
- 5 where the use or explosion of consumer fireworks may be prohibited or subject to further
- 6 regulation; to amend Chapter 60 of Title 36 of the Official Code of Georgia Annotated,
- 7 relating to general provisions regarding local government provisions applicable to counties
- 8 and municipal corporations, so as to provide for certain further regulations by counties,
- 9 municipal corporations, and consolidated governments; to amend Article 7 of Chapter 13 of
- 10 Title 48 of the Official Code of Georgia Annotated, relating to taxation of consumer
- 11 fireworks, so as to provide for local excise taxation of consumer fireworks and the collection
- of such excise tax; to provide for related matters; to provide for an effective date; to repeal
- 13 conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

15 SECTION 1.

- 16 Chapter 10 of Title 25 of the Official Code of Georgia Annotated, relating to regulation of
- 17 fireworks, is amended in Code Section 25-10-1, relating to definitions, by adding new
- 18 paragraphs to read as follows:
- 19 "(4.1) 'Electric plant' shall have the same meaning as provided for in Code Section
- 20 <u>46-3A-1.</u>"

14

- 21 "(8.1) 'Public gathering' means any mass congregated gathering of persons including, but
- 22 <u>not limited to, athletic or sporting events, church assemblies, and political rallies and</u>
- 23 <u>functions."</u>
- 24 "(12) 'Wastewater treatment plant' shall have the same meaning as provided for in Code
- 25 <u>Section 43-51-2.</u>

(13) 'Water treatment plant' shall have the same meaning as provided for in Code Section
 43-51-2."

28	SECTION 2.
20 29	Said chapter is further amended by revising paragraph (3) of subsection (b) of Code Section
30	25-10-2, relating to prohibited fireworks activities, as follows:
31	"(3)(A) It shall be unlawful to use fireworks, consumer fireworks, or any items defined
32	in paragraph (2) of subsection (b) of Code Section 25-10-1 indoors, within five yards
33	of a vertical or overhead obstruction, or across, into, or within the right of way of a
34	public road, street, highway, or railroad of this state.
3 4	(B) Except as provided for in subparagraph (D) of this paragraph and subject to
35 36	paragraph (4) of this subsection, it shall be lawful for any person, firm, corporation.
37 38	association, or partnership to use or explode or cause to be exploded any consumer
	fireworks on:
39	(i) Any any day between the hours times of 10:00 A.M. and 12:00 Midnight only
40	10:00 P.M. if such use or explosion is lawful pursuant to any noise ordinance of the
41	county, municipal corporation, or consolidated government of the location in which
42	such use or explosion occurs, except as otherwise provided for under divisions (ii) and
43	(iii) of this subparagraph; provided, however, that it shall be lawful for any person,
44	firm, corporation, association, or partnership to use or explode or cause to be
45	exploded any consumer fireworks on January 1, July 3, July 4, and December 31 of
46	each year between the hours of 12:00 Midnight and 2:00 A.M.
47	(ii) January 1 of each year between the times of 12:00 Midnight and 1:00 A.M. and
48	10:00 A.M. and 11:59 P.M.; and
49	(iii) July 3, July 4, and December 31 of each year between the times of 10:00 A.M.
50	and 11:59 P.M.
51	(C) Subject to paragraph (4) of this subsection, it shall be lawful for any person, firm,
52	corporation, association, or partnership to use or explode or cause to be exploded any
53	consumer fireworks anywhere in this state except:
54	(i) As provided for under subparagraph (A) and (F) of this paragraph;
55	(ii) In any location where such person, firm, corporation, association, or partnership
56	is not lawfully present or is not otherwise lawfully permitted to use or explode or
57	cause to be exploded any consumer fireworks; or
58	(iii) Within 100 yards of a nuclear power facility or an electric plant; water treatment

59

60

61

plant; wastewater treatment plant; a facility engaged in the retail sale of gasoline or

other flammable or combustible liquids or gases where the volume stored is in excess

of 500 gallons; a facility engaged in the production, refining, processing, or blending

of gasoline any flammable or combustible liquids or gases for such retail purposes;
any public or private electric substation; or a jail or prison;
(iv) Within 100 yards of a hospital, nursing home, or other health care facility
regulated under Chapter 7 of Title 31; provided, however, that an owner or operator
of such facility may use or explode or cause to be exploded consumer fireworks on
the property of such facility;
(v) Upon any property owned or operated by, for, or under the custody and control
of a governing authority of a county, municipal corporation, or consolidated

- of a governing authority of a county, municipal corporation, or consolidated government; provided, however, that such governing authority may use or explode or cause to be exploded consumer fireworks on such property;
- (vi) At a public gathering where, in the discretion of a law enforcement agency or local fire department having operational jurisdiction within the location of such use or explosion of consumer fireworks, such use or explosion of consumer fireworks is determined to not be reasonable in the interest of public safety; provided, however, that such law enforcement agency or local fire department provides notice of such determination or directs such person, firm, corporation, association, or partnership to cease such use or explosion of consumer fireworks;
- (vii) While under the influence of alcohol or any drug or any combination of alcohol and any drug to the extent that it is unsafe for such person to use or explode or cause to be exploded consumer fireworks or where a law enforcement officer has probable cause to believe that it is unsafe for such person to use or explode or cause to be exploded consumer fireworks; or
- (viii) For the purpose of deliberately or intentionally harassing, intimidating, or causing harm to others or where a law enforcement officer has probable cause to believe that such use or explosion is for the purpose of deliberately or intentionally harassing, intimidating, or causing harm to others.
- (D) Any person, firm, corporation, association, or partnership may use or explode or cause to be exploded any consumer fireworks on any day at a time not provided for under subparagraph (B) of this paragraph if such person, firm, corporation, association, or partnership is issued a special use permit pursuant to the law of a governing authority of a county or municipal corporation for the use or explosion of consumer fireworks in a location within such county or municipality at a time not provided for under subparagraph (B) of this paragraph. Such special use permit shall designate the time or times and location that such person, firm, corporation, association, or partnership may use or explode or cause to be exploded such consumer fireworks. A fee assessed by a county or municipal corporation for the issuance of a special use permit pursuant to this subparagraph shall not exceed \$100.00. No governing authority or official of a

county, municipality, or other political subdivision shall bear liability for any decisions made pursuant to this Code section.

(E) Nothing in this chapter shall be construed to prevent the governing authority of a county, municipal corporation, or consolidated government from enforcing any public health or safety law, including, but not limited to, noise and littering ordinances and regulations, in regard to consumer fireworks to the extent permitted under this chapter. (F) Whenever the Governor or the director of the Environmental Protection Division of the Department of Natural Resources issues a declaration of drought, the governing authority of any county, municipal corporation, or consolidated government within the boundaries of the area covered by such declaration may enact further regulations and restrictions concerning consumer fireworks than provided for under this chapter, including, but not limited to, a prohibition on the use or explosion of consumer fireworks for the duration of time that such declaration is in effect; provided, however, that no such further regulation or restriction by any county, municipal corporation, or consolidated government shall be effective pursuant to this subparagraph on January 1, July 3, July 4, or December 31 of any year."

SECTION 3.

Chapter 60 of Title 36 of the Official Code of Georgia Annotated, relating to general provisions regarding local government provisions applicable to counties and municipal corporations, is amended by revising Code Section 36-60-24, relating to sale or use or explosion of consumer fireworks products, as follows:

120 "36-60-24.

- 121 (a) The governing authority of a county, or municipal corporation, or consolidated
 122 government shall not prohibit the sale or use or explosion of consumer fireworks or
 123 products or services which are lawful under subsection (b) of Code Section 25-10-1, unless
 124 such prohibition is expressly authorized by general law.
- 125 (b) If the sale of a product or service is regulated by Chapter 10 of Title 25, the governing
 126 authority of a county, or municipal corporation, or consolidated government shall not enact
 127 additional regulation of the sale or use or explosion of such product or service, unless such
 128 additional regulation is expressly authorized by general law.
- 129 (c) Notwithstanding subsections (a) and (b) of this Code section, the governing authority
 130 of a county, or municipal corporation, or consolidated government may provide for permits
 131 or licenses for the sale or use of consumer fireworks as provided for under subsection (c)
 132 of Code Section 25-10-5.1.

(d) Notwithstanding subsections (a) and (b) of this Code section, the governing authority

- of a county, municipal corporation, or consolidated government may further regulate the
- sale of consumer fireworks from temporary consumer fireworks retail sales stands.
- 136 (e) The governing authority of a county, municipal corporation, or consolidated
- 137 <u>government</u> shall not unreasonably delay or deny an application for a temporary consumer
- fireworks retail sales stand.
- 139 (f) For purposes of this subsection, the terms 'consumer fireworks' and 'consumer
- fireworks retail sales stand' shall have the same meanings as provided in Code Section
- 141 25-10-1.
- 142 (g) Any ordinance enacted before, on, or after July 1, 2006, by a county or municipal
- 143 corporation in violation of this Code section is void."
- **SECTION 4.**
- 145 Article 7 of Chapter 13 of Title 48 of the Official Code of Georgia Annotated, relating to
- taxation of consumer fireworks, is amended by revising Code Section 48-13-131, relating to
- 147 excise tax imposed, rate of taxation, and payment, as follows:
- 148 "48-13-131.
- (a)(1) A state An excise tax, in addition to all other taxes of every kind imposed by law,
- is imposed upon the sale of consumer fireworks and any items provided for in paragraph
- 151 (2) of subsection (b) of Code Section 25-10-1 in this state at a rate of $\frac{5}{4}$ percent per item
- sold.
- 153 (b)(2) The state excise tax imposed by this article pursuant to this subsection shall be
- paid by the seller and due and payable in the same manner as would be otherwise
- required under Article 1 of Chapter 8 of this title.
- (b)(1) A local excise tax, in addition to all other taxes of every kind imposed by law, is
- imposed upon the sale of consumer fireworks and any items provided for in paragraph
- (2) of subsection (b) of Code Section 25-10-1 in this state at a rate of 1 percent per item
- 159 <u>sold.</u>
- 160 (2) The local excise tax imposed pursuant to this subsection shall be paid by the seller
- and due and payable to the local governing authorities imposing such tax for such sales
- occurring within their jurisdiction."
- 163 **SECTION 5.**
- 164 This Act shall become effective upon its approval by the Governor or upon its becoming law
- without such approval.

166 **SECTION 6.**

All laws and parts of laws in conflict with this Act are repealed.